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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JAMES ARTHUR ROSS,
Petitioner,
v.
JEAN HILL,
Respondent.

Case No. 6:10-cv-1440-HO
ANSWER

Respondent answers the Petition for Writ of Habeas Corpus and responds to this Court's Order, dated January 5, 2011, to show cause why the relief prayed for should not be granted and to state the true cause of petitioner's detention and whether remedies available to petitioner in the courts of the State of Oregon have been exhausted, as follows:

I.

Petitioner is in the custody of the Oregon Department of Corrections pursuant to the Judgment, dated August 31, 2004 from Douglas County Circuit Court Case No. 04CR0429FE

after convictions for one count of Attempted Aggravated Murder, two counts of Kidnapping in the First Degree, one count of Rape in the First Degree, two counts of Sodomy in the First Degree, two counts of Assault in the Second Degree, one count of Felony Assault in the Fourth Degree, Strangulation, Menacing and Interference with Making a Report (Exhibit 101). After petitioner pleaded No Contest/Guilty to the above-listed crimes, the trial court imposed various concurrent and consecutive sentences. After merging the two counts of Kidnapping, per the Court of Appeals' instructions, the total sentence petitioner received was 480 months of imprisonment (*id.*)

II.

1. Petitioner did not directly appeal his convictions, however, he subsequently filed an appeal to the Court of Appeals from a motion to amend/correct judgment. *See, State v. Ross*, A128651. Petitioner sought review of the denial of the motion to amend/correct judgment from the Oregon Supreme Court and was, ultimately, denied review, S052785. (The record for the direct appeal is attached as Exhibits 104-111.)

2. Petitioner filed a Fourth Amended Formal Petition for Post-Conviction Relief (Exhibit 112) in *Ross v. Hill*, Malheur County Circuit Court Case No. 05084630M, but the court denied relief (Exhibit 191). Petitioner appealed and the Oregon Court of Appeals reversed and remanded with instructions to enter judgment granting post-conviction relief and resentencing on kidnapping convictions; otherwise affirming, *Ross v. Hill*, 235 Or. App. 340, 231 P.3d 1185 (2010), and the Oregon Supreme Court denied review. 349 Or. 56, 240 P.3d 1097 (2010). (The record in the post-conviction appeal is attached as Exhibits 192-199.)

III.

Petitioner has no remaining state remedies on the issues he raises in this habeas corpus proceeding. He has, however, procedurally defaulted on certain issues by his failure to timely pursue to completion all his available remedies, and habeas review of those issues should be denied.

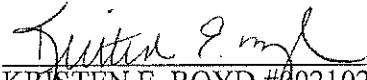
IV.

The court should dismiss all of the claims in the petition.

DATED this 9 day of September, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 9, 2011, I served the foregoing ANSWER upon the parties hereto by the method indicated below, and addressed to the following:

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2500 Westgate
Pendleton, OR 97801-9699

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 TELECOPY (FAX)
 E-MAIL
 E-FILE

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